Filed 1/22/19 Dunnigan v. Anderson CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THERESE M. DUNNIGAN, Plaintiff and Appellant, v. SAMANTHA ANDERSON, Defendant and Respondent.	B283891 (Los Angeles Superior Ct. No. 16STPB04748)

APPEAL from a judgment of the Superior Court of Los Angeles County, William P. Barry, Judge. Affirmed.

Hinojosa & Forer, Jeffrey Forer, Shannon H. Burns for Plaintiff and Appellant.

William A. Francis for Defendant and Respondent.

Appellant Therese Dunnigan and her late husband, Joseph, created the Dunnigan Family Trust ("the Trust") in 2000. Upon the first spouse's death, the Trust assets are to be divided into three irrevocable trusts. Upon the second spouse's death, the assets in those irrevocable trusts are to be distributed among Dunnigan's and Joseph's respective adult children and their issue, by right of representation.

After Joseph's death in 2016, Dunnigan filed a verified petition to modify the dispositive provisions of the Trust due to an alleged change in circumstances: the earlier deaths of two of her four children. Dunnigan asserted that she intended for her surviving children, not her grandchildren, to receive the bulk of her assets upon her death. One of her grandchildren, respondent Samantha Anderson, objected to Dunnigan's petition.

The trial court ordered the parties to brief the legal issue of whether the requested modification was permissible under Probate Code section 15409.[1] On the briefing and facts as asserted in the petition, the court ultimately ruled it was not, because the requested modification would defeat or substantially impair the purposes of the Trust. The court further ruled that Dunnigan's subjective intent did not warrant modification under the statute. It dismissed Dunnigan's petition with prejudice.

On appeal, Dunnigan contends the court erred by determining that she did not have standing under section 15409 and by dismissing the contested petition without affording her an evidentiary hearing. We disagree. The trial court dismissed the petition on its merits as a matter of law, not on standing grounds, and its conclusion was in accordance with section 15409. An

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[1]All further statutory references are to the Probate Code unless otherwise indicated.

evidentiary hearing was not required; there were no disputed facts and Dunnigan agreed to resolve the threshold legal question on the papers.

BACKGROUND

I. The Trust

Dunnigan and Joseph established the Trust on May 5, 2000. The initial corpus consisted of four real properties: two houses and a vacant lot in North Hollywood and a medical building in Burbank. One of the houses originally was Joseph's separate property; the other three properties originally were Dunnigan's separate property. The couple transmuted all four properties to community property contemporaneously with the creation of the Trust. The Trust authorizes them to add other community or separate property to the estate.

The Trust by its terms is amendable and revocable while both settlors are living. On the death of the first spouse, however, the trustee is required to divide the residue of the Trust estate into three separate irrevocable trusts: the Survivor's Trust, the Marital Trust, and the Exemption Trust. The Trust documents define these three trusts as follows: The Survivor's Trust "shall consist of the separate estate of the surviving spouse and his or her one-half interest in the community estate." The Marital Trust "shall include the minimum pecuniary amount necessary to eliminate entirely (or to reduce to the maximum extent possible) any federal estate tax at the deceased spouse's death," and the Exemption Trust "shall consist of the balance of the trust estate."

Upon the death of the surviving spouse, all of the assets remaining in the Survivor's and Marital Trusts are to be added to the Exemption Trust and distributed in accordance with the

following terms. The medical building, North Hollywood home, and vacant lot that originally were Dunnigan's separate property "shall be distributed outright and free of trust" to her four adult children, "by right of representation." The other North Hollywood home—originally Joseph's separate property—"shall be distributed outright and free of trust" to Joseph's two adult children, "by right of representation." "The residue of the trust estate shall be distributed one-half (1/2) to the children of Joseph H. Dunnigan, Jr. and one-half (1/2) to the children of Therese M. Dunnigan, in equal shares, by right of representation."

The Trust further provides that if "any beneficiary entitled to outright distribution of a share of the trust is under age twenty-five, the trustee shall hold and administer that beneficiary's portion of the trust estate for his or her benefit" until he or she turned 25. If any such beneficiary dies after the surviving spouse but prior to attaining age 25, "the trustee shall distribute that beneficiary's portion to that beneficiary's then-living issue or if none, to that beneficiary's heirs . . . ." It is undisputed that none of Dunnigan's or Joseph's children was under age 25 at the time the Trust was established; at least some of their grandchildren were, however.

Joseph died in May 2016, at which point Dunnigan became the "surviving spouse" and sole trustee and the Trust became irrevocable. Prior to that date, but after the Trust was established, two of Dunnigan's four adult children died. One of the decedent children was respondent Anderson's mother; by the terms of the Trust, Anderson stands to take her late mother's share of the Trust assets at Dunnigan's death "by right of representation."

II. The Petition

In December 2016, Dunnigan filed a verified petition to modify the dispositive terms of the Trust "based upon changed circumstances to reflect intent of the settlor." She alleged that she did not anticipate when the Trust was drafted that two of her children would predecease her, and asserted that her "initial intent, which remains to this day, was that upon Petitioner's death that her living children receive the bulk of her substantial assets."

Dunnigan proposed modifying the disposition provisions of the Trust to distribute the medical building at her death "outright and free of trust to her two surviving children . . . or the survivor of them. If both [the children] are not living, this gift shall be distributed in equal shares to Therese's grandchildren, per capita." She further proposed that the North Hollywood home on Wrightwood Drive that was her separate property[2] "be distributed at her death as follows: (a) THERESE's grand-daughter SAMANTHA ANDERSON shall receive the lesser of one-fourth of Wrightwood or an interest in Wrightwood worth $500,000 to be determined as of the date of THERESE's death, if she survives THERESE; (b) THERESE's [other] grand daughter [*sic*]. . . shall receive the lesser of one-eighth of Wrightwood or an interest in Wrightwood not worth $250,000 [*sic*], to be determined as of the date of THERESE's death, if she survives THERESE; and (c) the remaining interest in Wrightwood, including all lapsed shares, if any, in equal shares to THERESE's sons . . . if they survive THERESE. If both [sons] do not survive

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[2]Dunnigan stated in her petition that she "previously sold" the North Hollywood vacant lot "and therefore has removed mention of it from the proposed Trust Amendment."

THERESE, this portion of Wrightwood shall be distributed in equal shares to the surviving issue of all of Therese's children, per capita."

Dunnigan also proposed changes to dispositive provisions governing the one-half remainder allocated to her descendants. She proposed that her half be distributed to her surviving sons, or the survivor of them. If they both predecease her, "their one-half interest in the residue shall be distributed in equal shares to the surviving grandchildren of all of THERESE's children, per capita." Dunnigan's petition emphasized that her requested modifications "will in no manner impact or affect the beneficial share of any of Petitioner's predeceased spouse's issue."

III. The Objections

Anderson objected to Dunnigan's petition. She alleged that Dunnigan suffered from dementia and other ailments that rendered her incapable of modifying the Trust. Anderson also argued that the Trust could not be modified in any event, because it was irrevocable. Even if the irrevocable Trust could be amended, she further argued, section 15409 "only gives the trustee or beneficiary the right to move for reformation of the terms of a trust to carry out the Trustor's original intent, not some intent that is later conceived." Anderson expressly acknowledged that Dunnigan "has standing to bring such a Petition"; her legal arguments were predicated upon her assertion that Dunnigan was "trying to promote a new post drafting dispositive intent."

IV. The First Hearing

The court held a hearing on the petition in February 2017. Dunnigan's counsel explained to the court that Dunnigan "didn't perceive in her mind that, number one, her children would

predecease her and number two, that the document would become irrevocable. That's why we came to court, to change the circumstances." Anderson's counsel responded that the Trust was irrevocable and could not be modified, and that the issue was Dunnigan's intent when the trust was created. Dunnigan's counsel disagreed. He contended that "[i]t is her assets to give as she chooses because that's the change of circumstances. That's why she's coming to court."[3]

The court asked the parties what the law said, and whether there were any disputed facts. Anderson's counsel stated that it was disputed whether Dunnigan had the capacity to change the Trust and whether she was "under the influence of other people." Dunnigan's counsel stated that "the only fact that could possibly be at dispute, [is] whether or not she wants this. And so if she does want it, then the issue is: can you do it?" Dunnigan's counsel added, "And can you do it is a matter of law."

The court proposed that it "decide the matter of law first with assumed facts, and then you'll know where to go. If I decide that I agree with [Anderson's counsel], then no matter what her intent is she can't change it now, then why do a lot of discovery to find out if she has the ability to change it or not?" Dunnigan's counsel said that "makes sense" to him, and that he did not mind "briefing that issue and submitting it to the court." Anderson's counsel indicated that he had already briefed the issue to his satisfaction in the opposition filing, so the court ordered Dunnigan's counsel to file a response "on the issue of whether or

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[3]Counsel offered to have Dunnigan testify as to her intent: "if the facts are that this is not her intent, here she is. [¶] She will tell you her intent." The court declined the offer as "too glib," to which counsel replied, "Yeah, I get that."

not the irrevocable trust can be changed, because of the changed intent of the settlor." The court later reiterated, "what we're trying to do right now is set up the legal issue: can an irrevocable trust be changed if the settlor has changed circumstances?" Both counsel said they did not have any questions about moving forward in that fashion. No one framed the issue as a matter of standing, or even raised the topic of standing. In its minute order documenting the hearing, the court characterized the issue as "whether or not the Trust can be changed."

V. The Briefing

Prior to the continued hearing, Dunnigan's counsel filed a brief supporting her petition and responding to Anderson's objections. In briefing here, *the same counsel* criticizes the trial court for using this *same* (inaccurate) characterization of her petition, which in fact seeks to modify not the Survivor's Trust but "the dispositive provisions of the Trust as a whole as to Therese's assets." Notably, counsel also frames one of the questions presented as whether Dunnigan had standing.)~ Counsel argued that the "sole purpose of the Petition" was "to prevent Therese's grandchildren of her two pre-deceased children from receiving an inordinate and (frankly) undeserved portion of her estate." He further argued that section 15409 "expressly provides a broader and less restrictive ability for modification upon a change in circumstance."

Dunnigan did not allege any drafting errors in the Trust. Instead, her counsel argued that several "unanticipated events" necessitated the modification: "(1) [that] Joseph would be the first to die (such that it would not have been necessary to make the Survivor's Trust irrevocable); (2) two (2) of Therese's four (4) children would die between the time of the execution of the Trust

and Joseph's death 16 years later; or (3) that Therese's grandchildren would not take an active role (or any role) in Therese's life as an elderly woman and would let greed divide them, by making false and contemptible allegations against her and her deceased husband, and by suing their own grandmother in her twilight years." Counsel argued that these circumstances "warrant the relief that Therese now requests," though he also claimed that "[t]he change in circumstances is primarily Therese's inability to understand, during Joseph's lifetime, that upon Joseph's death that the entire trust would become irrevocable." Counsel contended that the changed circumstances undermined the purposes of the Trust, which he identified as "(1) [to] create an integrated estate plan that would allow a maximum amount of property to be transferred, without imposition of estate tax . . .; (2) to provide full control over the assets during Therese and Joseph's joint lifetime; (3) to carve out and protect Therese's separate property interests from potential misuse by Joseph if Therese was the first to die; and (4) to allow flexibility of distribution of the Survivor's Trust by providing the survivor with the right to gift all of the property away during the survivor's lifetime."

In Anderson's reply, her counsel argued that "the Trust reflects that [Dunnigan] did consider the possibility of [*sic*] one or more of her children could predecease her and her husband," since it included the language "by right of representation" as well as special provisions for beneficiaries under the age of 25. He contended that Dunnigan "is proposing a new post drafting dispositive intent [that is] unallowed as there was no drafting error in 2000."

VI. The Second Hearing

At the outset of the continued hearing, which occurred in March 2017, Dunnigan's counsel summarized for the court that during the prior hearing, the court had "questioned whether or not [Dunnigan] could bring this particular action to modify the Trust for these circumstances." The court agreed with that characterization. After reciting its understanding of the underlying facts and procedural posture of the case, the court observed that its decision "will turn on how I apply [section 15409] to the argument and facts presented to me." It invited counsel for Dunnigan to argue his position first.

He argued that section 15409 "is the proper vehicle" for the modification request because "she is a trustee, she is a beneficiary, in fact, she's the settlor. She put the document together. Her wishes should be heeded." Dunnigan's counsel further contended that "the request of what she's asking and the weight of it is a merit thing that will be proven by a trial or an evidentiary hearing or dealt with in some other fashion." Counsel agreed with the court that Dunnigan structured the Trust to be irrevocable "so that she could prevent Joseph from looting her separate property," but argued that the change of circumstance was "the repercussions of Joseph's death and the fact that her two children are deceased and she cannot say, well, I'll just give it to my two sons, because that's who I want to give my stuff to." He conceded that the phrase "right of representation" as used in the Trust means that the issue of a deceased beneficiary "st[e]p into their shoes."

Anderson's counsel argued that Dunnigan's use of that phrase in the Trust "reflects the fact that her intent at the time that she created the Trust was for it to go to her four children.

And if any of them died, then it would go by right of representation to the grandchildren. So it's very clear." He argued that a similar intent was evidenced by the "very not standard" provision affecting beneficiaries under the age of 25, "which can only be the grandchildren." He argued that Dunnigan's intent as reflected in the Trust was the relevant one under section 15409.

VII. The Ruling

The court issued a written order holding that Dunnigan could not modify the Trust under section 15409. The court recited the relevant facts, which were presented in the papers and not contested at the hearing: "Settlor Joseph Dunnigan died in May 2016. Petitioner/settlor Therese Dunnigan, his wife, is now 90 years old. There is no dispute that: (1) at the time the Trust was established, grandchildren of the settlors were less than 25 years old, (2) two of Petitioner's four children predeceased her: William and Penelope, and (3) Objector Samantha Anderson is the sole heir of Petitioner's predeceased child, Penelope." The court concluded that those facts were "not sufficient to trigger the modification rights allowed by PC 15409(a). To rule otherwise would allow any trustor's after-the-fact, subjective beliefs to be a basis for modifying or terminating an irrevocable trust; the exception would swallow the rule." The court further concluded that allowing the requested modification was not permitted by section 15409 because it "'would defeat or substantially impair the accomplishment of the purposes of the trust'. The trust was established to provide for the equal distribution of what had once been the spouses' separate property to their own children, whether or not the settlor's children survived their parent. . . . The proposed modification would result

in a significant change in the Trust's distribution to the heirs of the settlors' predeceased children – Objector being one of them." The court dismissed the petition with prejudice.

Dunnigan timely appealed.

DISCUSSION

Dunnigan contends the trial court erroneously dismissed her petition and denied her due process by reaching the issue of her intent without affording her discovery or an evidentiary hearing. We disagree.

As the trial court recognized—and Dunnigan's counsel did not dispute—its decision turned on "how I apply [section 15409] to the argument and facts presented to me." "The applicability of a statutory standard to undisputed facts and questions of statutory interpretation are questions of law that are reviewed de novo."[4] (*Estate of Wilson* (2012) 211 Cal.App.4th 1284, 1290.) Our primary duty in statutory interpretation is to discern and effectuate the Legislature's intent. (*Araiza v. Younkin* (2010) 188 Cal.App.4th 1120, 1124.) We begin with the text of the statute, giving the words their plain and common sense meaning. "'We construe the words of a statute in context, and harmonize the various parts of an enactment by considering the provision at issue in the context of the statutory framework as a whole. [Citations.]' [Citation.]" (*Ibid.*) Similar rules guide our interpretation of the Trust (see §§ 21120-21122), the "four corners" of which confine our assessment of the nature and extent of the rights retained by the trustor. (*Aguilar v. Aguilar* (2008) 168 Cal.App.4th 35, 39 (*Aguilar*).)

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[4]Dunnigan's counsel made clear below and has reiterated here that "[t]he salient facts are not disputed."

The relevant statute here is section 15409, subdivision (a) ("section 15409(a)"). It provides: "On petition by a trustee or beneficiary, the court may modify the administrative or dispositive provisions of the trust or terminate the trust if, owing to circumstances not known to the settlor and not anticipated by the settlor, the continuation of the trust under its terms would defeat or substantially impair the accomplishment of the purposes of the trust. In this case, if necessary to carry out the purposes of the trust, the court may order the trustee to do acts that are not authorized or are forbidden by the trust instrument." (§ 15409(a).)

Dunnigan argues that this statute gives her standing to seek modification of the trust. We agree with Dunnigan—and Anderson's concession below— that Dunnigan had standing to petition for modification under this provision.[5] She is both a trustee and beneficiary of the Trust; as such, she falls within the plain statutory language indicating who may bring a petition. Standing was not and is not the question here, however. The issue, as framed by the trial court and agreed to by the parties, is whether the modification Dunnigan proposed is permitted by the statute she invoked. This is not a question of standing or jurisdiction. "Whether the alleged events constitute circumstances sufficient to justify modification[s] of the trust, and whether the requested modifications would best serve the intent

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[5]Dunnigan's petition also invoked section 17200, which permits "a trustee or beneficiary of a trust . . . [to] petition the court . . . concerning the internal affairs of the trust," including "[a]pproving or directing the modification or termination of the trust." (§ 17200, subds. (a) & (b)(13).) Dunnigan's briefing in this court does not mention section 17200.

of the trustor . . . are matters of merit, not jurisdiction." (*Stewart v. Towse* (1988) 203 Cal.App.3d 425, 429.)

Dunnigan contends that she was entitled to a hearing before the court reached the merits of her claim. However, questions of merit may in proper circumstances be decided on the papers. This principle is the foundational premise underpinning pretrial disposition devices such as demurrers, summary adjudication, and summary judgment. (Cf. § 1000 [rules of civil practice generally apply in probate cases].) The circumstances of this case rendered decision without a further hearing appropriate. The court recognized, and the parties, including Dunnigan, agreed that "whether or not the irrevocable trust can be changed, because of the changed intent of the settlor" was a question of law that could be decided on the papers.

Moreover, Dunnigan's counsel has acknowledged that the "salient facts" are undisputed. Indeed, there is no dispute about the provisions of the Trust, the desired modifications, or the changed circumstances alleged in support of the modifications. When the pertinent facts are not disputed, it is not necessary for the court to conduct a hearing merely because a petition is contested. The trial court may "in its discretion . . . make any orders and take any other action necessary or proper to dispose of the matters presented by the petition. . . ." (§ 17206.) Resolving the petition on the papers was well within the court's discretion here.

Dunnigan argues, essentially, that the court engaged in a bait-and-switch. She contends it "went outside the limited scope of the hearing and went to the merits of the case without allowing either of the parties any discovery, any testimony, or present any evidence [*sic*]." The record indicates, however, that

the court clearly informed the parties it intended to resolve the legal issue of whether modification was permissible to save them the time and expense of discovery and protracted proceedings. Dunnigan's counsel told the court, "Makes sense to me, your honor," and added, "I don't mind briefing that issue and submitting it to the court." The court did slightly vary its wording of the issue it wanted briefed during the course of the first hearing, but no party asked for clarification of the court's ultimate order for briefing "on the issue of whether or not the irrevocable trust can be changed, because of changed intent of the settlor" despite the court's solicitation of questions. Furthermore, at the second hearing, Dunnigan's counsel summarized the matter for the court as, "you questioned whether or not she could bring this particular action to modify the trust for these circumstances." The references to "this particular action" and "these circumstances" strongly indicate that he understood that the issue before the court was not merely one of standing but rather of the merits.

We thus return to the statute and its application to the undisputed facts before the court. Section 15409(a) authorizes the court to modify dispositive provisions of an irrevocable trust "if, owing to circumstances not known to the settlor and not anticipated by the settlor, the continuation of the trust under its terms would defeat or substantially impair the accomplishment of the purposes of the trust." The statute refers to the purposes *of the trust*, not the current intentions of the settlor. Indeed, as Anderson has maintained throughout this litigation, the original intentions of the trustor, as expressed in the trust documents, are the key consideration. (See *Aguilar*, *supra*, 168 Cal.App.4th at p. 39 [the intention of the trustor is contained within the "four

corners" of the trust instrument].) The current Probate Code "codifie[s] the common law equitable power of trial courts to modify the terms of a trust instrument where such modification is necessary to serve the original intention of the trustors." (*Ike v. Doolittle* (1998) 61 Cal.App.4th 51, 83; see also *Stewart v. Towse, supra*, 203 Cal.App.3d at p.428.) Thus, drafting errors may be corrected under section 15409(a), but "a new, postdrafting, dispositive intent" is not a proper basis for modification under the statute. (*Bilafer v. Bilafer* (2008) 161 Cal.App.4th 363, 371.)

Here, the Trust by its plain language names the issue of Dunnigan's children beneficiaries "by right of representation." Unless a trust defines this phrase differently, which the Trust does not, it means "the property to be distributed shall be divided into as many equal shares as there are living children of the designated ancestor, if any, and deceased children who leave issue then living. Each living child of the designated ancestor is allocated one share, and the share of each deceased child who leaves issue then living is divided in the same manner." (§ 246, subds. (a) & (b).) The original intention of the trustors as reflected in the Trust is that Anderson (and other similarly situated grandchildren of the settlors) receive her parent's share if her parent predeceases Dunnigan and Joseph. The provisions referring to beneficiaries under the age of 25 bolster this interpretation. It is undisputed that none of Dunnigan's or Joseph's children was under 25 at the time the Trust was prepared; including these provisions would make little sense if the settlors did not intend or at least conceive of the possibility that their grandchildren would receive a share of the Trust assets. "The words of an instrument are to receive an

interpretation that will give every expression some effect, rather than one that will render any of the expressions inoperative." (§ 21120.) This is particularly true where the trustor does not allege there were drafting errors.

Section 15409(a) "expressly applies only when circumstances arising *after* the creation of the trust interfere with its purpose." (*Bilafer v. Bilafer*, *supra*, 161 Cal.App.4th at p. 369.) Dunnigan has identified several shifting circumstances throughout this litigation: Joseph's death, the deaths of her two children, and the rift in her relationship with her grandchildren. She has not, however, demonstrated that any of these circumstances interfere with any of the purposes of the Trust such that modification is necessary to ensure their accomplishment.

As the trial court recognized, the Trust by its terms evinces an intention "to provide for the equal distribution of what had once been the spouses' separate property to their own children, whether or not the settlor's children survived their parent." None of the changed circumstances interfere with this purpose.

Dunnigan has identified four Trust purposes: "(1) [to] create an integrated estate plan that would allow a maximum amount of property to be transferred, without imposition of estate tax . . .; (2) to provide full control over the assets during Therese and Joseph's joint lifetime; (3) to carve out and protect Therese's separate property interests from potential misuse by Joseph if Therese was the first to die; and (4) to allow flexibility of distribution of the Survivor's Trust by providing the survivor with the right to gift all of the property away during the survivor's lifetime." All of these purposes are served by the Trust's current terms despite the death of Joseph, the deaths of

Dunnigan's two adult children, and the deterioration of her relationship with her grandchildren.

First, the Marital Trust was structured to "eliminate entirely (or to reduce to the maximum extent possible) any federal estate tax at the deceased spouse's death"; this serves purpose number (1), and the proposed modifications to the dispositive provisions of the Trust do not affect it. Second, the Trust by its current terms provides full control over the assets during Dunnigan's and Joseph's joint lives. The Trust provides that it "may be revoked in whole or in part by either settlor," authorizes the settlors to receive "as much of the net income and principal" as they demand from both the community and separate estates, and further authorizes them to direct the trustee to make single or periodic payments from the trust estate to other persons or organizations "at any time." This provision affords the trustors "full control" over the assets while they are living. Third, the Trust carves out and protects Dunnigan's separate property interests from misuse if she predeceases Joseph. It provides that the Trust "may not be amended or revoked by any person," including both Joseph and Dunnigan. Finally, the Trust currently allows "flexibility of distribution of the Survivor's Trust by providing the survivor with the right to gift all of the property away during the survivor's lifetime." The Trust explicitly states that the "surviving spouse may at any time direct the trustee in writing to pay single sums or periodic payments out of the [Survivor's] trust estate to other persons or organizations including gifts . . . ."

With the purposes of the Trust as articulated by Dunnigan or indicated by the testamentary provisions of the Trust itself served despite the intervening circumstances alleged by

Dunnigan, the trial court had no legal basis under section 15409(a) to modify the trust. The petition properly was denied or dismissed as a matter of law on the undisputed facts of this case.

Aguilar, *supra*, 168 Cal.App.4th 35, is instructive. There, as here, "a wife entered into a joint estate plan with her husband—more particularly, an inter vivos trust that became irrevocable in its entirety on the death of the first spouse to die." (*Aguilar*, *supra*, 168 Cal.App.4th at p. 37.) The trust provided that, upon the death of the surviving spouse, the principal was to be divided equally among the husband's seven children and the wife's son. (*Id.* at p. 40.) The wife survived the husband and after his death "purported to withdraw her share of the community property from the trust." She then prepared a will leaving all of the property to her son after apparently developing "a different testamentary disposition in mind than the one set forth in the trust." (*Id.* at pp. 37-38.) One of the husband's sons learned of the wife's actions and filed a petition to declare the trust irrevocable and unwind the wife's actions withdrawing the property. (See *id.* at p. 38.) The trial court denied his petition, but the appellate court reversed. (*Id.* at p. 37.)

It concluded that "[h]aving made the trust irrevocable, [the wife] was not at liberty to change that planned distribution after [the husband's] death." (*Aguilar*, *supra*, 168 Cal.App.4th at p. 40.) "Irrevocable trusts are binding, even on their trustors." (*Id.* at p. 37.) Indeed, a treatise on drafting such trusts cautions, "Establishing an irrevocable trust is not difficult; undoing one is almost impossible." (Drafting California Irrevocable Trusts (3d ed Cal. CEB) § 1.4.) A "change of heart in terms of [the wife's] desired estate plan with respect to the principal of the joint trust" was not a sufficient basis for her to effectively and unilaterally

modify the trust. (*Aguilar*, *supra*, 168 Cal.App.4th at p. 41.) "Unfortunately," the court noted, "it was too late for her to effectuate a change. She had already entered into an irrevocable estate plan with [her husband]." (*Ibid.*)

What was true in *Aguilar* is true here. Although Dunnigan argues that "she should be entitled to do with her assets as she pleases, and give it [*sic*] to whomever she desires when she dies," she, like Aguilar, has "already entered into an irrevocable estate plan." The trial court did not err in concluding, as a matter of law, that the plan could not be modified under section 15409(a) on the grounds Dunnigan asserted.

DISPOSITION

The judgment of the trial court is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

COLLINS, J.

We concur:

WILLHITE, ACTING P.J. DUNNING, J.*

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* Judge of the Orange County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.